UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

WATERWORKS PLUMBING & BACKFLOW, INC.

and

Cases 03-CA-027665 03-CA-064979

UNITED ASSOCIATION, PLUMBERS & STEAMFITTERS LOCAL UNION NO. 22

DECISION AND ORDER

Statement of the Cases

On April 3, 2012, Waterworks Plumbing & Backflow, Inc. (the Respondent), United Association, Plumbers & Steamfitters Local Union No. 22 (the Union), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

The Board has delegated its authority in this proceeding to a three-member panel.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

The Respondent, a corporation with an office and place of business in Tonawanda, New York (Respondent's Tonawanda, New York facility), has been engaged in the construction industry as a plumbing contractor providing plumbing services to existing and new construction commercial and residential customers.

During the 12 months preceding the settlement stipulation, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for Walgreens, Tops Markets, LLC, Tim Horton's and Wilson Farms, enterprises directly engaged in interstate commerce.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organizations involved

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, AFL-CIO (the International Union) has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent, the Unit, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, as set forth in Articles II and III of the agreements between the Union and the Western New York Association of Plumbing and Mechanical Contractors, dated May 1, 2007-April 30, 2010 and dated May 1, 2010-April 30, 2014 and in Articles I, VII, IX of the agreements between the International Union and the Mechanical Contractors Association of America, Inc. and its department, the Mechanical Service Contractors of America dated August 1, 2005-July 31, 2010 and August 1, 2010-July 31, 2015.

On about March 1, 2010, the Respondent, an employer engaged in the building and construction industry, as described above, granted recognition to the International Union and its constituent local union, the Union, as the exclusive collective-bargaining representative of the Unit and since that date they have been recognized as such representative by the Respondent without regard to whether the majority status of the International Union and its constituent local union, the Union, had ever been established under the provisions of Section 9(a) of the Act.

At all material times, the International Union and its constituent local union, the Union, have been the limited exclusive collective-bargaining representative of the Unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that

The Respondent, Waterworks Plumbing & Backflow, Inc, Tonawanda, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

- (a) Failing and refusing to apply all the terms of the 2010 Local Agreement to employees in the Unit.
- (b) In any like or related manner, failing or refusing to bargain collectively and in good faith with the Union.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Make whole, with interest, ¹ employees in the Unit for any loss of wages resulting from:
 - (i) The Respondent's failure to adhere to or to apply all the terms of the 2007 Local Agreement to employees in the Unit from March 30, 2010 through April 30, 2010.
 - (ii) The Respondent's failure to adhere to or to apply all the terms of the 2010 Local Agreement to employees in the Unit, since May 1, 2010.
 - (iii) The Respondent's failure to adhere to or to apply all the terms of the 2005 National Agreement to employees in the Unit, from March 30, 2010 through July 31, 2010.
 - (iv) The Respondent's failure to adhere to or apply all the terms of the 2010 National Agreement to employees in the Unit, from August 1, 2010 through July 31, 2011.

As provided in New Horizons for the Retarded, 283 NLRB 1173 (1987) and Kentucky River Medical Center, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. Jackson Hospital Corp. v. NLRB, 647 F.3d 1137 (D.C. Cir. 2011).

- (b) Make whole² the various employee benefit funds for any loss of contributions resulting from:
 - (i) The Respondent's failure to adhere to or apply the terms established in Article VII of the 2007 Local Agreement for contributions owing under the terms of said Agreement, on behalf of employees in the Unit, from March 30, 2010 through April 30, 2010.
 - (ii) The Respondent's failure to adhere to or apply the terms established in Article VII of the 2010 Local Agreement for contributions owing under the terms of said Agreement, on behalf of employees in the Unit, since May 1, 2010.
 - (iii) The Respondent's failure to adhere to or apply the terms established in Article XII of the 2005 National Agreement for contributions owing under the terms of said Agreement, on behalf of employees in the Unit, from March 30, 2010 through July 31, 2010.
 - (iv) The Respondent's failure to adhere to or apply the terms established in Article XII of the 2010 National Agreement for contributions owing under the terms of said Agreement, on behalf of employees in the Unit, from August 1, 2010 through July 31, 2011.
- (c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records, and reports and all other records including an electric copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.³
- (d) Within 14 days of service by the Region, post at its Tonawanda, New York facility, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or

² As provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979).

³ The amounts due under paragraphs 2(a) and (b) of this Order will be determined in a compliance investigation or/and a compliance proceeding to be scheduled by the Regional Director for Region 3, upon approval of this formal settlement stipulation by the Board.

closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 30, 2010.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region, attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C., May 14, 2012

(SEAL)	NATIONAL LABOR RELA	NATIONAL LABOR RELATIONS BOARD	
	Sharon Block,	Member	
	Richard F. Griffin, Jr.,	Member	
	Brian E. Hayes,	Member	

Appendix A

NOTICE TO EMPLOYEES

Posted Pursuant to an Order of the National Labor Relations Board An Agency of the United States Government

PURSUANT TO A FORMAL SETTLEMENT STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

Start a union, join a union, or give assistance to a union; Bargain collectively with us through your chosen representative; Act together for your common benefit; Choose not to do any of these things.

On or about March 1, 2010, and effective on the same date, we entered into an agreement with United Association, Plumbers & Steamfitters Local Union No. 22 (the Local Union), by which we agreed to be bound by the terms of the 2007-2010 collective-bargaining agreement between Local 22 and the Western New York Association of Plumbing and Mechanical Contractors, and any future agreements unless timely notice to terminate was given. This agreement is referred to below as the 2007 Local Agreement. The successor agreement, which became effective on May 1, 2010, is referred to below as the 2010 Local Agreement.

On or about March 1, 2010, and effective on the same date, we also entered into an agreement with the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, AFL-CIO (the International Union), by which we agreed to be bound by the terms of the 2005-2010 collective-bargaining agreement between the International Union and the Mechanical Contractors of America's department, the Mechanical Service Contractors of America, and any future agreements unless timely notice to terminate was given. This agreement is referred to below as the 2005 National Agreement. The successor agreement, which became effective on August 1, 2010, is referred to below as the 2010 National Agreement.

In doing so, we granted voluntary recognition to the International Union and its Local 22 as the limited exclusive collective-bargaining representative of our employees in the appropriate bargaining unit that is described below (the Unit). We granted such recognition without an election conducted by the NLRB, or a demonstration that the Union represented a majority of our employees in the Unit. The National Labor Relations Act provides for such voluntary recognition in the construction industry.

From on or about March 30, 2010 to on or about December 14, 2010, we failed and refused to adhere to the 2007 and 2010 Local Agreements and the 2005 and 2010 National Agreements.

Since on or about March 21, 2011, we have failed and refused to apply all the terms of the 2010 Local Agreement to our employees in the Unit, by failing to submit fringe benefit fund remittance reports, by failing to remit contributions to various employee benefit funds, and by failing to furnish a surety bond or the cash equivalent.

On or about June 1, 2011, the International Union terminated our National Agreement, effective August 1, 2011.

From on or about March 21, 2011 to on or about July 31, 2011, we failed and refused to apply all the terms of the 2010 National Agreement to our employees in the Unit, by failing to submit fringe benefit fund remittance reports, by failing to remit contributions to various employee benefit funds, and by failing to furnish a surety bond or the cash equivalent.

WE WILL NOT violate your rights under the National Labor Relations Act.

WE WILL NOT fail or refuse to apply all the terms of the 2010 Local Agreement to employees in the Unit.

WE WILL NOT, in any like or related manner, fail or refuse to bargain collectively and in good faith with Local 22.

WE WILL NOT, in any like or related manner, do anything that interferes with, restrains, or coerces you with respect to your rights under the National Labor Relations Act.

WE WILL give effect to the terms of the 2010 Local Agreement.

WE WILL make whole, with interest, employees in the Unit for any loss of wages or other expenses resulting from:

- Our failure to adhere to or to apply all the terms of the 2007 Local Agreement to employees in the Unit, from March 30, 2010 through April 30, 2010.
- Our failure to adhere to or apply all the terms of the 2010 Local Agreement to employees in the Unit, since May 1, 2010.
- Our failure to adhere to or to apply the terms of the 2005 National Agreement to employees in the Unit, from March 30, 2010 to July 31, 2010.
- Our failure to adhere to or to apply all the terms of the 2010 National Agreement to employees in the Unit, from August 1, 2010 through July 31, 2011.

WE WILL make whole the various employee benefit funds for any loss of contributions resulting from:

- Our failure to adhere to or apply the terms established in Article VII of the 2007 Local Agreement for contributions owing under the terms of said Agreement on behalf of employees in the Unit from March 30, 2010 through April 30, 2010.
- Our failure to adhere to or apply the terms established in Article VII of the 2010 Local Agreement for contributions owing under the terms of said Agreement on behalf of employees in the Unit, since May 1, 2010.
- Our failure to adhere to or apply the terms established in Article XII of the 2005 National Agreement for contributions owing under the terms of said Agreement on behalf of employees in the Unit, from March 30, 2010 through July 31, 2010.
- Our failure to adhere to or apply the terms established in Article XII of the 2010 National Agreement for contributions owing under the terms of said Agreement on behalf of employees in the Unit, from August 1, 2010 through July 31, 2011.

The following employees of Waterworks Plumbing & Backflow, Inc. constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, as set forth in Articles II and III of the agreements between the Union and the Western New York Association of Plumbing and Mechanical Contractors, dated May 1, 2007-April 30, 2010 and dated May 1, 2010-April 30, 2014 and in Articles I, VII, IX of the agreements between the International Union and the Mechanical Contractors Association of America, Inc. and its department, the Mechanical Service Contractors of America dated August 1, 2005-July 31, 2010 and August 1, 2010-July 31, 2015.

	Waterworks Plumbing & Backflow, Inc. (Employer)		
DATE:	BY:(Representative)	(Title)	